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Attorneys for Defendant Mark Wovsaniker

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

V.

JOHN MICHAEL KELLY, STEVEN E. RINDNER, JOSEPH A. RIPP, and MARK WOVSANIKER,

Defendants.

08 Civ. 4612-SWK
ECF Case

DEFENDANT MARK WOVSANIKER'S NOTICE OF MOTION TO DISMISS COMPLAINT

Defendant Mark Wovsaniker, through his undersigned counsel, hereby moves for an order dismissing the Complaint with prejudice. As support for this motion, Defendant Wovsaniker states that the Complaint fails to state a claim on which relief can be granted as required by Fed. R. Civ. P. 12(b)(6) and fails to plead fraud with particularity as required by Fed. R. Civ. P. 9(b). As additional support, defendant relies on the points and authorities contained in the Memorandum of Law in Support of Defendant Mark Wovsaniker's Motion to Dismiss the Complaint and the Declaration of Stephen G. Topetzes, Esq. with attached exhibits, both of which are submitted herewith.

Respectfully submitted,

K&L GATES LLP

By: /s/ Stephen G. Topetzes
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Attorneys for Defendant Mark Wovsaniker

Dated: September 5, 2008

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SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**JOHN MICHAEL KELLY, STEVEN E.
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Defendants.

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CERTIFICATE OF SERVICE

I, Stephen G. Topetzes, hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

I am a partner at the law firm K&L Gates LLP, attorneys for Defendant Mark Wovsaniker.

On September 5, 2008, I served a true and correct copy of the foregoing Notice of Motion in the above-captioned matter on counsel of record via the Court's ECF System.

Executed on September 5, 2008.

/s/ Stephen G. Topetzes
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